

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL W. BROWN,

Petitioner,

v.

CASE NO. 03-73247

HONORABLE ARTHUR J. TARNOV

DAVID SMITH,

Respondent.

_____ /

ORDER GRANTING A CONDITIONAL WRIT OF HABEAS CORPUS

Petitioner Michael W. Brown has been convicted of criminal sexual conduct involving his fourteen-year-old daughter. In an application for the writ of habeas corpus, he alleged, among other things, that his trial attorney's failure to investigate and obtain records pertaining to his daughter's counseling sessions amounted to ineffective assistance of counsel. The Court agreed that the attorney's performance was deficient, but concluded that Petitioner was not prejudiced by the deficient performance.

On December 31, 2008, the United States Court of Appeals for the Sixth Circuit reversed this Court's decision after concluding that the deference afforded to a state court's decision under 28 U.S.C. § 2254(d) did not apply to this case. The Court of Appeals further concluded that Petitioner was prejudiced by his trial attorney's deficient performance. The Court of Appeals remanded Petitioner's case to this Court for entry of a conditional writ of habeas corpus. *See Brown v. Smith*, ___ F.3d ___, No. 06-2295, 2008 WL 5411899 (6th Cir. Dec. 31, 2008).

Pursuant to the appellate court's opinion and judgment, this Court **GRANTS** a conditional writ of habeas corpus. The State shall have 180 days from the date of the appellate court's opinion and judgment (December 31, 2008) to release Petitioner or to commence a new trial against him.

s/Arthur J. Tarnow

Arthur J. Tarnow
United States District Judge

Dated: January 27, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 27, 2009, by electronic and/or ordinary mail.

s/Catherine A. Pickles

Judicial Secretary